

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Trevor Hackett	Team: Squad #8	CCRB Case #: 202003240	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input checked="" type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 05/02/2020 5:00 PM, Saturday, 05/02/2020 6:30 PM	Location of Incident: Inside Brower Park (corner of Park Place and Brooklyn Avenue); 77th Precinct stationhouse	Precinct: 77	18 Mo. SOL 11/2/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sun, 05/03/2020 10:50 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 05/13/2020 11:16 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Napolitano	05521	958971	077 PCT
2. Officers			
3. POF Stephanie Perez	26230	964210	077 PCT
4. POM Matthew Melendez	18332	955179	077 PCT
5. POM Christian Feraca	28279	965088	077 PCT
6. SGT Derek Jaffe	01641	953993	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Malcolm Brissettortiz	11357	960281	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Melendez	Force: Inside Brower Park in Brooklyn, Police Officer Matthew Melendez pointed his gun at § 87(2)(b)	
B. Officers	Force: Inside Brower Park in Brooklyn, officers drew their guns.	
C.POM Matthew Melendez	Abuse: Inside Brower Park in Brooklyn, Police Officer Matthew Melendez threatened § 87(2)(b) with the use of force.	
D.POM Michael Napolitano	Force: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano used physical force against § 87(2)(b)	
E.POM Michael Napolitano	Force: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano used a chokehold against § 87(2)(b)	
F.POM Michael Napolitano	Force: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano restricted § 87(2)(b) breathing.	
G.POM Michael Napolitano	Force: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H.POM Michael Napolitano	Force: Inside Briower Park in Brooklyn, Police Officer Michael Napolitano used physical force against § 87(2)(b)	
I.POM Matthew Melendez	Discourtesy: Inside Brower Park in Brooklyn, Police Officer Matthew Melendez spoke discourteously to § 87(2)(b)	
J.POM Matthew Melendez	Discourtesy: Inside Brower Park in Brooklyn, Police Officer Matthew Melendez spoke discourteously to § 87(2)(b)	
K.POM Matthew Melendez	Off. Language: Inside Brower Park in Brooklyn, Police Officer Matthew Melendez made offensive remarks to § 87(2)(b)	
L.POM Michael Napolitano	Abuse: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano refused to provide his shield number to an individual.	
M.POM Christian Feraca	Discourtesy: Inside Brower Park in Brooklyn, Police Officer Christian Feraca spoke discourteously to § 87(2)(b)	
N.POM Michael Napolitano	Discourtesy: At the 77th Precinct stationhouse, Police Officer Michael Napolitano spoke discourteously to § 87(2)(b)	
O.POM Michael Napolitano	Abuse: At the 77th Precinct stationhouse, Police Officer Michael Napolitano threatened § 87(2)(b) with the use of force.	
P.SGT Derek Jaffe	Abuse: At the 77th Precinct Stationhouse, Sergeant Derek Jaffe did not obtain medical treatment for § 87(2)(b)	
Q.POF Stephanie Perez	Abuse: At the 77th Precinct stationhouse, Police Officer Stephanie Perez did not obtain medical treatment for § 87(2)(b)	
R. Officers	Abuse: At the 77th Precinct stationhouse, officers did not obtain medical treatment for § 87(2)(b)	
S.POM Michael Napolitano	Discourtesy: At the 77th Precinct stationhouse, Police Officer Michael Napolitano spoke discourteously to § 87(2)(b)	
T.POM Michael Napolitano	Discourtesy: At the 77th Precinct stationhouse, Police Officer Michael Napolitano spoke discourteously to § 87(2)(b)	
U.POM Michael Napolitano	Abuse: At the 77th Precinct stationhouse, Police Officer Michael Napolitano threatened § 87(2)(b) with the use of force.	
V.POM Michael Napolitano	Untruthful Stmt.: On December 3, 2021, and December 28, 2021, Police Officer Michael Napolitano provided a misleading official statement to the CCRB.	
W.POM Michael Napolitano	Untruthful Stmt.: On December 3, 2021, Police Officer Michael Napolitano provided a false official statement to the CCRB.	

### Case Summary

On May 3, 2020, § 87(2)(b) called IAB and filed this complaint. This complaint was received by the CCRB on May 13, 2020.

On May 2, 2020, at approximately 5:00 p.m., § 87(2)(b) was inside Brower Park in Brooklyn and saw officers, including Police Officer Matthew Melendez of the 77<sup>th</sup> Precinct, point their guns at § 87(2)(b) (**Allegations A and B: Force**, § 87(2)(g) PO Melendez also pointed his taser at § 87(2)(b) (**Allegation C: Abuse of Authority**, § 87(2)(g) As officers were escorting § 87(2)(b) out of the park, Police Officers Michael Napolitano and Malcom Brissettortiz of the 77<sup>th</sup> Precinct turned around and approached § 87(2)(b) PO Napolitano used a chokehold against § 87(2)(b) to bring him to the ground, and while doing so, restricted § 87(2)(b) breathing (**Allegations D, E and F: Force**, § 87(2)(g) Once on the ground, PO Napolitano punched § 87(2)(b) placed his hands on the back of § 87(2)(b) head and pushed his face into the ground (**Allegations G and H: Force**, § 87(2)(g) While officers were arresting § 87(2)(b) inside the park, PO Melendez was placing § 87(2)(b) in the back of a police vehicle and said that § 87(2)(b) was, “playing fucking stupid” (**Allegation I: Discourtesy**, § 87(2)(g) § 87(2)(b) allegedly kicked PO Melendez in the face and in response, PO Melendez asked § 87(2)(b) if he was “fucking retarded” and made several other profane remarks (**Allegation J: Discourtesy**, § 87(2)(g) **Allegation K: Offensive Language**, § 87(2)(g) While § 87(2)(b) was being escorted out of the park, an unidentified individual requested PO Napolitano’s shield number, which he refused to provide (**Allegation L: Abuse of Authority**, § 87(2)(g) Once § 87(2)(b) was placed inside a police vehicle, Police Officer Christian Feraca said to § 87(2)(b) “Stop fucking spitting. No fucking spitting in here” (**Allegation M: Discourtesy**, § 87(2)(g) § 87(2)(b) was transported back to the 77<sup>th</sup> Precinct stationhouse where PO Napolitano said to him, “If I see you again, I’m going to fucking crack you again” (**Allegation N: Discourtesy**, § 87(2)(g) **Allegation O: Abuse of Authority**; § 87(2)(g) While at the stationhouse, § 87(2)(b) allegedly requested medical treatment from Sergeant Derek Jaffe and Police Officer Stephanie Perez of the 77<sup>th</sup> Precinct as well as several other officers, which they failed to obtain (**Allegation P: Abuse of Authority**, § 87(2)(g) **Allegation Q: Abuse of Authority**, § 87(2)(g) **Allegation R: Abuse of Authority**, § 87(2)(g)

§ 87(2)(b) parents, § 87(2)(b) and § 87(2)(b) later arrived at the 77<sup>th</sup> Precinct stationhouse and spoke with PO Napolitano, who told them that he arrested § 87(2)(b) because he was “being a fucking dickhead” and told § 87(2)(b) that there were “no fucking white kids to arrest in the precinct. PO Napolitano then allegedly said to § 87(2)(b) “I’m going to fuck you up like I fucked your son up” and told both § 87(2)(b) and § 87(2)(b) to “get the fuck out” of the stationhouse (**Allegations S and T: Discourtesy**, § 87(2)(g) **Allegation U: Abuse of Authority**, § 87(2)(g)

During his interview on December 3, 2021, PO Napolitano provided both a misleading official statement and a false official statement to the CCRB (**Allegations V: Untruthful Statement**, § 87(2)(g) On December 28, 2021, during a subsequent interview for this case, PO Napolitano provided a misleading statement to the CCRB (**Allegation W: Untruthful Statement**, § 87(2)(g)

§ 87(2)(b) was charged with assaulting a police officer, resisting arrest, obstructing governmental administration, and disorderly conduct. § 87(2)(b) was ultimately released with a desk appearance ticket for resisting arrest.

Body Worn Camera (BWC) footage was obtained from Police Officer Tyrell Major, Police Officer Kenneth Anderson, Deputy Inspector John Buttacavoli, Police Officer Stephanie Perez, Police Officer Corey Mott, Police Officer Matthey Melendez, Police Officer Michelle Giglio, Police Officer Deondre Castello, Lieutenant Sean Claxton, Police Officer Ryan Gaynor, Police Officer Marcella Shamblee, Police Officer Connor Boalick, Police Officer Joshua Stembridge, Police Officer Raymond Sanchez, Police Officer Johnathan Todman, Police Officer Tahir Malik, Police Officer Christian Feraca, Police Officer Brett Ostrander, Police Officer Kenneth Gilleneau, Police Officer Gherghe Cojocar, Police Officer Daniel Staffa, Police Officer Michael Napolitano, Police Officer Malcom Brissettortiz and Sgt. Johnathan Cotter. The footage is located in IAs #109-132 (**Board Review 04 – 34**) and 199-201 and is summarized in IA #133 (**Board Review 35**).

Cell phone footage of the incident was provided by § 87(2)(b) and is located in IAs #23 and 24 (**Board Review 36, 37**). The footage is summarized in IAs #25 and 26 (**Board Review 38, 39**).

Stationhouse footage from the 77<sup>th</sup> Precinct was obtained and is located in IA #74 and #229 (**Board Review 40, 41**) and is summarized in IA #240 (**Board Review 42**).

**Allegation A – Force: Inside Brower Park in Brooklyn, Police Officer Michael Melendez pointed his gun at § 87(2)(b)**

**Allegation B – Force: Inside Brower Park in Brooklyn, Officers pointed their guns at § 87(2)(b)**

**Allegation C – Abuse of Authority: Inside Brower Park in Brooklyn, Police Officer Michael Melendez threatened § 87(2)(b) with the use of force.**

It is undisputed that PO Melendez drew and pointed his gun at § 87(2)(b) while placing him under arrest. What remains in dispute is whether he was justified in doing so and whether any other officers drew their firearms during the incident.

BWC from PO Melendez shows, at 00:12, visible on the media player at the bottom of the screen, PO Melendez has drawn his gun, is holding it in his right hand, and is pointing it in front of him. At 00:19, PO Melendez's taser is visible in his left hand. He points it at § 87(2)(b) as he approaches him. § 87(2)(b) puts his hands up, gets on his knees, and is handcuffed on the ground by PO Melendez and another officer. At 00:35, Several civilians can be heard telling officers that PO Melendez pulled out his gun. PO Melendez responds by saying, "Yes, I did." The footage does not capture any other officer with their guns drawn. The footage does not capture § 87(2)(b) discard any object prior to being handcuffed, though the footage appears to start after the foot pursuit has already begun. The footage does not capture any other officer with their firearms drawn (**Board Review 13**).

§ 87(2)(b) statement was somewhat consistent with the BWC. § 87(2)(b) stated that on May 2, 2020, at approximately 5:00 PM, he was sitting on a park bench inside Brower Park in Brooklyn, when he observed multiple officers point their guns at § 87(2)(b) during his arrest. § 87(2)(b) did not know § 87(2)(b) prior to this incident. § 87(2)(b) could not approximate how many officers drew their guns and did not allege that any officers pointed their guns at § 87(2)(b) (**Board Review 43**).

§ 87(2)(b) was uncooperative with the investigation and was therefore not interviewed.

PO Melendez's statement was generally consistent with the BWC. Earlier on the day of the incident, PO Melendez was instructed by his commanding officer to be on the lookout for § 87(2)(b) named § 87(2)(b) in the vicinity of Brower Park, though he did not recall what this was in regard to. § 87(2)(b) is a known gang member and is known to carry a firearm. PO

Melendez was not aware of the reason he was instructed to be on the lookout for § 87(2)(b). At approximately 3:00 p.m., PO Melendez received a call from PO Brissettortiz informing him that § 87(2)(b) was spotted in Brower Park. PO Melendez was unaware of what § 87(2)(b) was doing prior to being in the park. PO Melendez and PO Perez responded to the location and observed § 87(2)(b) near the basketball courts. § 87(2)(b) saw PO Melendez as PO Melendez exited his vehicle and began to run. As soon as he did so, § 87(2)(b) threw an unknown object straight up into the air. PO Melendez did not see what this object was, or where § 87(2)(b) removed the object from on his person. The object was black, but PO Melendez could not describe its size or shape. PO Melendez did not know if there were any other officers present when they first observed § 87(2)(b). PO Melendez was unaware of a previous incident involving § 87(2)(b) in which he got into an accident with a police car after riding through the park on a motor bike. PO Melendez and PO Perez chased § 87(2)(b) who ultimately surrendered to the officers. PO Melendez acknowledged drawing and pointing his firearm at § 87(2)(b) at the end of the foot pursuit him because § 87(2)(b) was a known gang member with a history of carrying weapons and because § 87(2)(b) threw something as he ran from the officers, which further raised PO Melendez's suspicion that he may be armed. PO Melendez did not know if that object was ever recovered, nor did he know if there was a canvass conducted after § 87(2)(b) arrest. PO Melendez acknowledged holstering his firearm and then pointing his taser at § 87(2)(b) after § 87(2)(b) stopped running from the officers. § 87(2)(b) did not resist arrest in any way aside from fleeing from officers (**Board Review 44**).

PO Perez' statement was somewhat consistent with PO Melendez's. PO Perez stated that she and PO Melendez were informed by DI Buttacavoli to be on the lookout for § 87(2)(b) who had an active I-Card and an open complaint report against him. The I-Card was associated with an incident earlier that same day in which officers attempted to stop § 87(2)(b) while he was on a motorbike. § 87(2)(b) fled through the crowded park on the motorbike, which constituted reckless endangerment. Once § 87(2)(b) left the park, he got into an accident with a police vehicle, then fled the scene. PO Perez stated there was also an open UF-61 against § 87(2)(b) for these incidents. At approximately 5:00 PM, PO Perez and PO Melendez were inside their vehicle and observed § 87(2)(b) inside Brower Park. § 87(2)(b) had his hands inside his pockets and immediately fled from the officers. When asked if PO Perez made any observation that § 87(2)(b) was armed, she stated that while fleeing from the officers, § 87(2)(b) threw a black rectangular object, which was roughly the size and shape of a smartphone, into the air. PO Perez had been informed that § 87(2)(b) is known to carry a firearm, though PO Perez did not observe him with one during the incident. PO Perez did not know what this object was and did not know if officers canvassed the location for a weapon. PO Perez approximated that she was two to three car lengths away from § 87(2)(b) when he discarded the object. When § 87(2)(b) began running, PO Perez remained in the vehicle and drove inside and around the park using the roadways. PO Perez exited her vehicle and ran toward § 87(2)(b) who had run in a loop, and who had been apprehended back at the basketball courts where the officers first observed him. PO Perez did not observe any officers draw and point their firearms or tasers at § 87(2)(b) (**Board Review 45**).

PO Brissettortiz' statement was generally consistent with PO Melendez's and PO Perez's. PO Brissettortiz did not observe any officer draw and point their firearms or tasers at § 87(2)(b) and denied doing so himself. PO Brissettortiz did not make any observation that § 87(2)(b) was armed during the encounter and did not witness him discard any objects during the foot pursuit. PO Brissettortiz fell during the foot pursuit and by the time he caught up to § 87(2)(b) he was already being handcuffed by PO Melendez (**Board Review 46**).

PO Napolitano's statement was somewhat consistent with the other officers. He stated that upon arriving at Brower Park, he observed PO Melendez handcuffing § 87(2)(b). PO Napolitano denied

drawing and pointing his firearm or taser at § 87(2)(b) and denied observing any other officer doing so (**Board Review 47**).

The complaint report associated with the incident states that while at Brower Park, officers were flagged down by a civilian, who informed officers that there was § 87(2)(b) identified as § 87(2)(b) on a motorbike driving recklessly through the park. Officers then observed § 87(2)(b) recklessly operating a motorbike at a high rate of speed and riding it through a lawn where people were sitting. § 87(2)(b) then rode out of the park at Prospect Place and Kingston Avenue. While canvassing, officers observed § 87(2)(b) traveling westbound on St. Marks Avenue approaching Kingston Avenue, activated their turret lights and sirens and attempted to stop § 87(2)(b) who attempted to evade officers. § 87(2)(b) struck the front right bumper of the police vehicle as well as another parked vehicle with his motorbike. § 87(2)(b) then fled the scene of the accident on foot (**Board Review 48**).

NYPD Patrol Guide, Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of an officer or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (**Board Review 50**). NYPD Patrol Guide,

NYPD Patrol Guide Procedure 221-08 states that Conducted Electrical Weapons should only be used against persons who are actively resisting, against persons exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present (**Board Review 49**).

PO Melendez acknowledged drawing and pointing his firearm at § 87(2)(b) at the end of the foot pursuit because § 87(2)(b) was a known gang member with a history of carrying firearms and because § 87(2)(b) threw something as he ran from the officers, which further raised PO Melendez's suspicion that he may be armed. Though PO Perez also stated that she observed § 87(2)(b) discard a black rectangular object during the foot pursuit, no other officer interviewed observed this occur and no officer could recall if there was a canvass for a firearm conducted at the scene. BWC footage of the incident begins after the foot pursuit of § 87(2)(b) has already begun and is inconclusive as to what object, if any, is discarded by § 87(2)(b). PO Melendez, PO Perez, PO Brissettortiz and PO Napolitano had no recollection of any other officers drawing their firearms or pointing them at § 87(2)(b). BWC footage of the incident is inconclusive as to whether any other officers drew their firearms during the incident.

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(b) actively resisted arrest when he fled the scene of an accident involving a police vehicle and later when he fled from officers when they encountered him in the park. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation I – Discourtesy: Inside Brower Park in Brooklyn, Police Officer Michael Melendez spoke discourteously to § 87(2)(b).**

**Allegation J – Discourtesy: Inside Brower Park in Brooklyn, Police Officer Michael Melendez spoke discourteously to § 87(2)(b).**

**Allegation K – Offensive Language: Inside Brower Park in Brooklyn, Police Officer Michael Melendez made offensive remarks to § 87(2)(b).**

The above allegations were captured on BWC and not alleged by any civilian.

BWC from PO Melendez shows, at 01:08, visible on the media player at the bottom of the screen, PO Melendez escorts § 87(2)(b) to a police vehicle and puts him in the back seat. At 01:08, § 87(2)(b) is seated in the rear of the police vehicle with the door open and is speaking to PO Melendez. § 87(2)(b) asks PO Melendez what he did. PO Melendez says, "You know what you did. Playing fucking stupid." At 01:43, § 87(2)(b) again asks what he did. PO Melendez says, "Don't play fucking..." and does not finish his sentence. At 03:10, § 87(2)(b) calls out to a supervisor who is outside the police vehicle. A struggle appears to occur between PO Melendez and § 87(2)(b). PO Melendez can be heard saying to § 87(2)(b) "Are you fucking stupid? Are you fucking retarded? You kicked me in the fucking face. Now I'm going to charge you with assault." § 87(2)(b) denies doing this. PO Melendez states, "Yes you did. Assault 2 now. Congratulations you stupid motherfucker" (**Board Review 13**).

PO Melendez's statement was somewhat consistent with his BWC footage. While placing § 87(2)(b) into the police car, § 87(2)(b) kicked him in the mouth. In response, PO Melendez grabbed § 87(2)(b) feet to prevent § 87(2)(b) from kicking him again. PO Melendez did not recall using any profanity toward § 87(2)(b) at any point during the incident and did not recall calling § 87(2)(b) "retarded." After reviewing the BWC footage, PO Melendez acknowledged that he told § 87(2)(b) that he was "playing fucking stupid" though he did not recall doing so. PO Melendez also acknowledged making profane remarks after § 87(2)(b) kicked him in the face. PO Melendez stated that these remarks were not directed toward § 87(2)(b) and were used to deescalate the situation after he was kicked in the face (**Board Review 44**).

NYPD Patrol Guide, Procedure 200-02 requires that officers render their services with civility and respect (**Board Review 51**). An officer's use of an impolite word during a stressful street encounter where that officer is attempting to gain control of the situation does not constitute misconduct (DAO-DCT Case #201818951) (**Board Review 52**).

Though PO Melendez acknowledged telling § 87(2)(b) that he was "playing fucking stupid," he had no independent recollection of doing so. At the time this remark was made, § 87(2)(b) was handcuffed in the back of a police vehicle and the situation was under control. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Melendez' profane remarks after being kicked were directed towards § 87(2)(b) despite PO Melendez assertion that they were not. The word "retarded" is a pejorative term to describe someone with a mental disability. § 87(2)(g)

§ 87(2)(g)



**Allegation D – Force: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano used force against § 87(2)(b)**

**Allegation E – Force: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano used a chokehold against § 87(2)(b)**

**Allegation G – Force: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano restricted § 87(2)(b) breathing.**

**Allegation H – Force: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano used force against § 87(2)(b)**

**Allegation I – Force: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano used force against § 87(2)(b)**

PO Napolitano's memo book notes an arrest of a disorderly male inside Brower Park. A Threat Resistance and Injury (TRI) report for § 87(2)(b) was prepared by Sgt. Anthony Bertram. The incident details section states "Officer Napolitano was assisting in crowd control during an arrest situation when the subject began interfering and trying to prevent officers from arresting another individual. Officer Napolitano ordered the subject to step back numerous times but the subject refused and continued to try to push through officers towards the other individual being arrested. The subject was told that he was now being arrested but refused to place his hands behind his back. Officer Napolitano attempted to gain control of the subject by forcibly taking him to the ground. Once on the ground, the subject was still resisting arrest and refusing lawful orders by locking his arms and not placing them behind his back. Officer Napolitano utilized one hand strike to the subject's left cheek which gained the subjects compliance, and he was successfully handcuffed without further incident" (Board Review 53). PO Napolitano's own TRI report states that § 87(2)(b) was actively resisting, wrestling/grappling with officers, and pushing and shoving officers. The report lists the reason for force against § 87(2)(b) as "Overcome Resistance or Aggression, Defense of Other MOS, Defense of Self, Fleeing Suspect" (Board Review 54).

BWC from PO Melendez shows, between 00:00 and 00:25 on the media player, visible at the bottom of the screen, PO Melendez runs into Brower Park toward § 87(2)(b) who gets onto his knees and lies face down on the ground before PO Melendez handcuffs him. The footage does not capture § 87(2)(b) or any other civilian standing near § 87(2)(b) when PO Melendez approaches him. At 00:30, PO Melendez is handcuffing § 87(2)(b) on the ground and orders several individuals to back up. At 00:39, three individuals recording the incident can be seen standing six to eight feet in front of PO Melendez, though the footage does not capture § 87(2)(b) (Board Review 13).

A snapshot taken from PO Perez's BWC footage at 00:25 shows that while PO Melendez is handcuffing § 87(2)(b) on the ground, § 87(2)(b) (black hoodie, black pants) can be seen standing in front of a white bench approximately ten to fifteen feet behind them. PO Napolitano can also be seen standing to the left of § 87(2)(b) (Board Review 55).

Cell phone video I captures a different angle of § 87(2)(b) arrest and shows, at 00:00, PO Melendez approaching and handcuffing § 87(2)(b). During this time, multiple civilians are standing around PO Melendez and recording the interaction. § 87(2)(b) is not captured in the footage and it does not appear that any civilian attempts to physically interfere with § 87(2)(b) arrest. At 00:29, officers are escorting § 87(2)(b) out of the park. At 00:40, § 87(2)(b) can be seen



stepping into the right side of the frame. PO Brissettortiz and PO Napolitano turn around and approach § 87(2)(b) who turns in the opposite direction and takes three steps before stopping, turning towards the officers, and extending both of his arms outward to his sides with his palms open. When PO Napolitano reaches § 87(2)(b) he lowers his hands and holds them in front of his torso. At 00:50, PO Napolitano grabs § 87(2)(b) by his left arm then positions himself behind § 87(2)(b). At 00:54, PO Napolitano hooks his left arm around the left side of § 87(2)(b) neck and forcibly takes him to the ground, causing § 87(2)(b) to land on his right side. PO Napolitano does not attempt to pull § 87(2)(b) hands behind his back before taking him to the ground. Once on the ground, PO Brissettortiz is holding onto § 87(2)(b) hands before PO Napolitano takes § 87(2)(b) to the ground, though PO Brissettortiz is not involved in doing so. While on the ground, PO Brissettortiz is kneeling next to § 87(2)(b) and appears to be reaching for his hands, which § 87(2)(b) is holding in front of his body. During this time, PO Napolitano is on top of § 87(2)(b) upper body. At 00:57, PO Napolitano pulls his right elbow back and quickly releases his arm forward in the direction of § 87(2)(b) though it is unclear what, if any, contact was made. At 01:02, as PO Brissettortiz continues trying to pull one of § 87(2)(b) hands behind his back, PO Napolitano raises his right hand with a closed fist, and swings toward § 87(2)(b) upper body, though the footage does not capture where or whether contact is made with § 87(2)(b). Immediately following PO Napolitano's swing, § 87(2)(b) turns onto his stomach and officers handcuff § 87(2)(b). Though the angle of this footage captures § 87(2)(b) from behind while on the ground, it appears that § 87(2)(b) is holding his arms in front of his body as PO Brissettortiz attempts to pull them behind his back. § 87(2)(b) does not kick his legs at any point and the footage does not capture him push or shove any officer while standing or on the ground (**Board Review 36**).

BWC from PO Napolitano captures a different angle of the time in which PO Napolitano approaches § 87(2)(b) before taking him to the ground. The footage begins with PO Napolitano standing in front of § 87(2)(b) (black pants, purple shoes). PO Napolitano then walks past § 87(2)(b) and begins to walk out of the park. At 00:20, PO Napolitano turns around and walks back toward § 87(2)(b). At 00:26, § 87(2)(b) has his hands raised above the frame (PO Napolitano's BWC is angled downward and only captures the lower half of § 87(2)(b) body. § 87(2)(b) then lowers his hands and holds them in front of his waistband before PO Napolitano grabs § 87(2)(b) left arm and takes him to the ground (**Board Review 29**).

Cell phone video II captures a different angle of § 87(2)(b) arrest. The footage opens with PO Napolitano and PO Brissettortiz approaching § 87(2)(b) before PO Napolitano forcibly takes § 87(2)(b) to the ground. At 00:18, § 87(2)(b) is laying face down on the ground and PO Napolitano, who is above § 87(2)(b) upper body, puts his hands on the back of § 87(2)(b) head. PO Napolitano then leans over § 87(2)(b) and puts his body weight onto the back of § 87(2)(b) head. § 87(2)(b) can be heard screaming as a result PO Napolitano pushing his face into the ground. While this is happening, PO Brissettortiz has one of § 87(2)(b) hands behind his back. § 87(2)(b) free hand is on the ground above his head. PO Napolitano does not make any attempt to gain control of § 87(2)(b) free hand (**Board Review 37**).

§ 87(2)(b) statement was generally consistent with the BWC. § 87(2)(b) stated that he was inside Brower Park and observed § 87(2)(b) arrest with approximately 25 other bystanders. § 87(2)(b) could not recall specifically how many officers were in the park. During § 87(2)(b) arrest, § 87(2)(b) spoke to the officers and said something to the effect of, "What are you doing? You're bothering young black kids. This has got to stop." § 87(2)(b) did not recall whether or how officers responded to his statements. Officers escorted § 87(2)(b) out of the park to

a police vehicle. PO Napolitano and PO Brissettortiz appeared to be leaving the park when § 87(2)(b) made a remark to them that he could not recall. PO Napolitano and PO Brissettortiz turned around in response. § 87(2)(b) could not recall what, if anything, the officers said to him. PO Napolitano then took § 87(2)(b) by his neck and brought him to the ground. PO Napolitano released his hold on § 87(2)(b) neck once § 87(2)(b) was on the ground. Prior to this, § 87(2)(b) breathing was restricted for approximately five to seven seconds. PO Napolitano punched § 87(2)(b) in the left eye. He also punched § 87(2)(b) once on his back and once on the back of his head. The officer also had his knee on § 87(2)(b) back and his hands on the back of § 87(2)(b) head while it was touching the ground. § 87(2)(b) was not making any movements while on the ground. He was unable to provide further details of the force used against him and emphasized that everything was captured on cell phone video **(Board Review 1, 43)**.

PO Melendez' statement was inconsistent with the video footage. PO Melendez stated that when he approached § 87(2)(b) to handcuff him, § 87(2)(b) approached PO Melendez and tried to step between PO Melendez and § 87(2)(b). PO Melendez told § 87(2)(b) to back up numerous times, which he eventually did. PO Melendez did not recall whether § 87(2)(b) made any physical contact with him when he stepped between PO Melendez and § 87(2)(b). PO Melendez did not remember if § 87(2)(b) said anything to him before stepping between PO Melendez and § 87(2)(b). PO Melendez did not know if any other officer spoke with § 87(2)(b) during this incident. PO Melendez did not observe § 87(2)(b) arrest as he had already escorted § 87(2)(b) out of the park to place him in a police vehicle. After viewing his BWC footage, PO Melendez stated that it captured the time in which he encountered § 87(2)(b) though he could not tell from the footage the specific moment in which this occurred **(Board Review 44)**.

PO Napolitano's statement was inconsistent with the video footage. PO Napolitano acknowledged being present inside Brower Park during § 87(2)(b) arrest though he did not recall any other details regarding the arrest or the events leading up to it. PO Napolitano had not had any interactions with § 87(2)(b) prior to this date. PO Napolitano did not recall how many civilians were in the park and could not say whether there were "many" or "not many." Once § 87(2)(b) was arrested, PO Napolitano was advised by an officer, whom he could not recall, to place § 87(2)(b) under arrest. PO Napolitano did not know why he was ordered to place § 87(2)(b) under arrest and did not observe § 87(2)(b) committing any offenses prior to this. When asked if he had interacted with § 87(2)(b) prior to being instructed to arrest him, PO Napolitano stated "there were so many people, I don't remember if it was specific to him." PO Napolitano was asked to clarify because he had previously stated that he did not recall how many people were at the scene. PO Napolitano stated that there were many people, though he could not provide an exact number, and did not know what they were doing at the time. PO Napolitano acknowledged that he may have had a verbal interaction with § 87(2)(b) prior to receiving instructions to arrest him, though he did not recall any additional details about this. PO Napolitano was directed to his memo book comments, in which he characterized § 87(2)(b) behavior as "disorderly," though he could not recall why he wrote this.

PO Napolitano walked back to § 87(2)(b) and asked him to place his hands behind his back. PO Napolitano did not recall how many times he asked § 87(2)(b) to place his hands behind his back. PO Napolitano did not recall if any other officers had given § 87(2)(b) any other commands or if other officers interacted with § 87(2)(b). § 87(2)(b) raised both fists in front of his chest in a "boxer stance", and said "fuck you, I'm not going anywhere." § 87(2)(b) aggressive behavior caused PO Napolitano to fear for his safety. PO Napolitano did not recall if § 87(2)(b) appeared armed or did anything else which caused PO Napolitano to fear for his safety. PO Napolitano did not recall if any other officer interacted with § 87(2)(b).

at this point. PO Napolitano grabbed § 87(2)(b) left arm, then swung around behind § 87(2)(b) to his right arm and brought him to the ground, face first, to gain control and arrest him. PO Napolitano landed on top of § 87(2)(b) who was kicking and moving his body while on the ground. § 87(2)(b) contacted PO Napolitano while he was kicking, but PO Napolitano did not recall where he contacted him. PO Napolitano could not recall if § 87(2)(b) kicked anyone else while he was on the ground. PO Napolitano denied contacting § 87(2)(b) neck during his arrest. PO Napolitano did not recall if § 87(2)(b) complained of difficulty breathing at any point and stated that it did not appear that § 87(2)(b) had difficulty breathing. While § 87(2)(b) was on the ground, PO Napolitano utilized a hand strike to § 87(2)(b) left cheek to “deescalate” the situation. Following the hand strike, § 87(2)(b) put his hands behind his back and was handcuffed. When asked if he applied pressure to the back of § 87(2)(b) head while § 87(2)(b) was on the ground, PO Napolitano responded that he was “guiding” § 87(2)(b) head because there was spit coming out of his mouth and he was fearful of contracting Covid-19. PO Napolitano did not recall if § 87(2)(b) was deliberately spitting at him. PO Napolitano denied applying pressure to the back of § 87(2)(b) head and did not recall specifically how he guided § 87(2)(b) head. PO Napolitano did not recall if he utilized any additional hand strikes to the back of § 87(2)(b) head or to his back.

PO Napolitano was directed to his memo book entry for this incident in which he characterized § 87(2)(b) as “disorderly” (**Board Review 59**). When asked for clarification, PO Napolitano stated he did not recall why he wrote this. PO Napolitano was presented with the TRI report he prepared. PO Napolitano’s attention was drawn to the “Force Against Reporting MOS” section, which stated that § 87(2)(b) was pushing and shoving. When asked at what point this occurred, PO Napolitano stated that he did not recall. PO Napolitano then stated that he was unable to get § 87(2)(b) in handcuffs because § 87(2)(b) was “pushing up” and kicking while they were both on the ground. PO Napolitano was directed to the “Reason for Force” section, which listed “fleeing suspect.” When asked for clarification, PO Napolitano stated that the comment made by § 87(2)(b) that he was “not going anywhere” made him believe that he was not going to comply and could flee.

PO Napolitano reviewed footage from Cell Phone I and acknowledged that it showed him leaving the park, then turning around to engage with § 87(2)(b). PO Napolitano did not recognize any other officers present at the time he turned to engage with § 87(2)(b). PO Napolitano identified 00:52 timestamp as the moment in which § 87(2)(b) raised his fists to PO Napolitano. PO Napolitano denied making any contact with § 87(2)(b) neck when he took him to the ground, and instead said that he contacted § 87(2)(b) chest. PO Napolitano reviewed footage between the 00:56 and 01:01 timestamps. PO Napolitano stated that this was when he struck § 87(2)(b) left cheek. PO Napolitano was shown the footage between the 01:00 and 01:06 timestamps. PO Napolitano acknowledged bringing his left hand up and then back down and attributed this to his hand slipping while he was trying to bring § 87(2)(b) hand behind his back.

PO Napolitano reviewed footage from Cell Phone II between the 00:10 and 00:26 timestamps and again stated that the contact he made with § 87(2)(b) head while on the ground was an attempt to “guide” § 87(2)(b) head away from him because there was spit coming out of his mouth and he was concerned about contracting Covid-19. The footage did not refresh PO Napolitano’s recollection as to whether he applied any pressure to the back of § 87(2)(b) head (**Board Review 47**).

PO Brissettortiz’s statement was somewhat inconsistent with the video footage. PO Brissettortiz stated that he did not recall if any civilian attempted to interfere with § 87(2)(b) arrest. As

officers were leaving the park, PO Napolitano told him that § 87(2)(b) was going to be arrested. PO Brissettortiz turned around with PO Napolitano and approached § 87(2)(b). He did not recall observing § 87(2)(b) in the park prior to this point and did not know why § 87(2)(b) was going to be arrested. PO Brissettortiz was unaware of any offenses that § 87(2)(b) committed prior to this point. He did not recall any other officer instructing PO Napolitano to arrest § 87(2)(b). PO Brissettortiz did not recall PO Napolitano engaging in a verbal dispute with any civilian prior to approaching § 87(2)(b). PO Napolitano and PO Brissettortiz approached § 87(2)(b) and ordered him to put his hands behind his back and § 87(2)(b) refused. PO Brissettortiz grabbed § 87(2)(b) hand and § 87(2)(b) pulled them away. PO Brissettortiz did not recall § 87(2)(b) raising his fists to him or PO Napolitano. He did not recall whether § 87(2)(b) said anything to the officers when they approached. § 87(2)(b) pulled his hands away from PO Brissettortiz, who grabbed his hands again and used his body weight to take § 87(2)(b) to the ground. PO Brissettortiz did not know what PO Napolitano was doing when § 87(2)(b) was taken to the ground. He did not recall whether PO Napolitano made any contact with § 87(2)(b) neck as he was brought to the ground. PO Brissettortiz attempted to handcuff § 87(2)(b) but § 87(2)(b) kept moving his hands and pulling away from PO Brissettortiz' grip. PO Brissettortiz did not recall if § 87(2)(b) was kicking while on the ground or whether he struck any officer. PO Brissettortiz did not recall whether PO Napolitano punched § 87(2)(b) and denied doing so himself. He did not recall whether § 87(2)(b) said that he had difficulty breathing or whether it appeared that he had difficulty breathing. He did not observe PO Napolitano put his hands on the back of § 87(2)(b) head and push his face into the ground and did not observe § 87(2)(b) attempt to spit at anyone (**Board Review 46**).

Patrol Guide Procedure 221-01 permits officers to use force when it is reasonable to ensure their safety or that of a third person, when it is reasonable to place a person into custody or to prevent escape from custody. In determining whether the use of force is reasonable, officers shall consider the actions taken by the subject, and the immediacy of the perceived threat or harm to the subject, officers, and/or bystanders. Officers are categorically prohibited from using chokeholds, which are defined as “any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air” (**Board Review Board Review 50**)

BWC and cell phone footage of the incident shows that § 87(2)(b) did not interfere with § 87(2)(b) arrest by stepping in between PO Melendez when he approached § 87(2)(b) to handcuff him. While PO Melendez is handcuffing § 87(2)(b) on the ground, he does order several individuals filming the arrest to back up, though § 87(2)(b) is not among these individuals. BWC from PO Perez briefly captures § 87(2)(b) location while § 87(2)(b) is on the ground and shows § 87(2)(b) standing to the right of PO Napolitano in front of a white bench approximately ten to fifteen feet behind PO Melendez. It is unclear what, if any, interaction occurred between § 87(2)(b) PO Napolitano, or any other officer during § 87(2)(b) arrest. However, cell phone footage of the incident shows that PO Napolitano and the other officers initially decide to leave the park without taking any enforcement action against § 87(2)(b).

§ 87(2)(b) statement was consistent with cell phone footage, which shows that PO Napolitano and PO Brissettortiz are walking out of the park and turn around to engage § 87(2)(b) seemingly in response to a remark he made. PO Napolitano stated that when approached, § 87(2)(b) raised his fists in front of his chest and refused to comply with orders to put his hands behind his back, causing PO Napolitano to fear for his safety and leading to his decision to take § 87(2)(b) to the ground. However, cell phone footage coupled with BWC from PO Napolitano shows that § 87(2)(b) initially attempts to walk away from the officers before stopping and raising his arms to his sides with his palms open to seemingly express his

confusion at why the officers are approaching him. § 87(2)(b) then lowers his hands and puts them in front of his waistband before PO Napolitano grabs his arm, and four seconds later, takes him to the ground. § 87(2)(b) does not raise his fists to officers or make any other physical gesture that could be reasonably perceived as a physical threat before he is taken to the ground.

Despite PO Napolitano's denial that he made any contact with § 87(2)(b) neck when he was taken to the ground, cell phone video shows that while behind § 87(2)(b) PO Napolitano hooks his left arm above § 87(2)(b) left shoulder and around his neck, then pulls § 87(2)(b) in the opposite direction to throw him to the ground. PO Napolitano's contact with § 87(2)(b) neck is captured in a snapshot from cell phone I (Board Review66). Despite PO Brissettortiz' statement, PO Napolitano alone took § 87(2)(b) to the ground. Once on the ground, § 87(2)(b) is laying on his right side while PO Brissettortiz is holding his left arm and attempting to pull it behind his back while § 87(2)(b) is trying to pull it away. PO Napolitano stated that § 87(2)(b) kicked him while on the ground and that § 87(2)(b) was "pushing up" against him. However, cell phone footage shows that § 87(2)(b) did not kick PO Napolitano while on the ground and was not kicking his legs at all. Additionally, § 87(2)(b) was laying on his right side, and therefore could not have used his free, right hand to "push up" against anything, much less PO Napolitano.

PO Napolitano stated that he utilized a hand strike to § 87(2)(b) head to "deescalate" the situation. However, after doing so, § 87(2)(b) then turns onto his stomach and PO Napolitano puts his hands on the back of § 87(2)(b) head, leans over him, and uses his bodyweight to push § 87(2)(b) face into the ground, causing § 87(2)(b) to scream in pain. § 87(2)(b) is already facing the ground when PO Napolitano puts his hands on the back of his head and the recording does not capture him spitting at PO Napolitano. During this time, § 87(2)(b) free arm can be seen resting on the ground and at no point does PO Napolitano attempt to pull it behind his back.

A preponderance of the evidence shows that PO Napolitano's interaction with § 87(2)(b) was spurred from a likely offensive remark § 87(2)(b) made following § 87(2)(b) arrest as officers were leaving the park. Though it is unclear if § 87(2)(b) refused to comply with any order to put his arms behind his back, he did not make any threatening gestures towards the officers or attempt to flee once they approached him, nor did PO Napolitano attempt to handcuff § 87(2)(b) before almost immediately utilizing a chokehold to throw § 87(2)(b) to the ground. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

While on the ground, § 87(2)(b) resisted by attempting to pull his arm away from PO Brissettortiz. PO Napolitano's account of the degree to which § 87(2)(b) was resisting was largely inaccurate. PO Napolitano's hand strike was not used to deescalate the situation, after which he pushed § 87(2)(b) face into the ground which was seemingly intended cause pain instead of to gain compliance. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Allegation L - Abuse of Authority: Inside Brower Park in Brooklyn, Police Officer Michael Napolitano refused to provide his shield number to an individual.**

The above allegation was captured on cell phone video and not alleged by any civilian.

Cell phone footage of the incident shows, at 00:35, visible on the media player at the bottom of the screen, shows that once § 87(2)(b) is handcuffed, the individual filming the encounter says to officers, "Can I please have his (PO Napolitano's) badge number." The individual repeats this request several times and PO Feraca tells him that he will provide him with PO Napolitano's shield number "after." The individual follows and continues to record PO Napolitano as he walks out of the park. The individual is walking approximately eight to ten feet away from PO Napolitano and loudly states, "I need his badge number. he punched him in his face." PO Napolitano, who is standing approximately five feet away from the individual at this point, acknowledges the individual, turns towards him, and briefly gestures towards his shield. PO Napolitano then begins walking toward the individual. PO Feraca quickly steps in front of the individual and orders him to step back. PO Napolitano then leaves the location and does not verbally provide his shield number at any point.

PO Napolitano did not recall if any civilian asked for his shield number during the incident. After reviewing cell phone footage of the interaction, PO Napolitano stated that he did not have an independent recollection of any civilian requesting his shield number (**Board Review 47**).

Patrol Guide Procedure, 203-09 states that officers must clearly state their name, rank, shield number, and command, or otherwise provide this information, to any civilian who requests they do so (**Board Review 56**).

Although the individual did not directly ask PO Napolitano for his shield number, the cell phone footage shows that PO Napolitano acknowledges the individual's request, turns towards the individual and briefly gestures toward his shield. PO Napolitano is continuing to walk as he makes this gesture, and, as such, the footage does not clearly capture his shield. At no point does he verbally provide this information to the individual.

§ 87(2)(g) PO Napolitano acknowledged the individual was requesting his shield number and did not take the appropriate steps to ensure that the individual was provided with this information. § 87(2)(g)

**Allegation M: Discourtesy – Police Officer Christian Feraca spoke discourteously to § 87(2)(b)**

§ 87(2)(b) did not allege that PO Feraca used any profanity towards him, though BWC footage captures this.

BWC from PO Feraca shows, at 03:18 on the media player located at the bottom of the screen, § 87(2)(b) is in the back of a police vehicle and is shouting something unintelligible at the officers. PO Feraca, who is sitting in front of § 87(2)(b) in the driver's seat responds "Stop fucking spitting bro! Seriously, no fucking spit." BWC from PO Major shows, at 00:45, § 87(2)(b) is positioned in the rear-center passenger seat behind PO Feraca. The police vehicle does not have a partition between the front and rear seats. The footage does not capture § 87(2)(b) spitting on PO Feraca (**Board Review 24**).

PO Feraca's statement was generally consistent with the BWC. PO Feraca acknowledged making the profane remark to § 87(2)(b). He did so because § 87(2)(b) was yelling at and talking



loudly to the officers while in the police vehicle, which did not have a partition between the front and rear seats. As such, PO Feraca could feel § 87(2)(b) spit hit his arm. PO Feraca did not know if § 87(2)(b) was deliberately trying to spit on him but made the remark due to concern over Covid-19 and wanted to make that point that spitting was not appropriate (**Board Review 57**).

An officer's use of an impolite word during a stressful street encounter where that officer is attempting to gain control of the situation does not constitute misconduct (DAO-DCT Case #201818951) (**Board Review 52**).

BWC footage shows that § 87(2)(b) was seated directly behind PO Feraca while shouting at officers and that there is no partition in the vehicle. However, the footage does not definitively capture § 87(2)(b) either intentionally or unintentionally spit on PO Feraca. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Allegation N: Discourtesy – At the 77<sup>th</sup> Precinct stationhouse, Police Officer Michael Napolitano spoke discourteously to § 87(2)(b)**

**Allegation O: Abuse of Authority – At the 77<sup>th</sup> Precinct stationhouse, Police Officer Michael Napolitano threatened § 87(2)(b) with the use of force.**

BWC footage from PO Major shows, at 14:51, § 87(2)(b) is standing outside of a holding cell and speaking to Police Officer Matthew Fagan about his arrest. § 87(2)(b) says that from a distance, he was “talking shit” to an officer, who was already walking away. § 87(2)(b) then asks why that officer turned around to choke him and punch him in the face. PO Fagan asks § 87(2)(b) “Was it any of these guys?” § 87(2)(b) then points to an officer standing out of frame. The officer then states, “It was me. I did it. If I see you again, I’m going to crack you in the fucking face again.” The officer then repeats this remark (**Board Review 31**).

§ 87(2)(b) statement was generally consistent with the BWC footage as he alleged that PO Napolitano made this remark (**Board Review 1**).

PO Napolitano's statement was inconsistent with the BWC. PO Napolitano initially stated that he did not recall having any interaction with § 87(2)(b) while at the stationhouse (**Board Review 47**). In a second interview, after reviewing PO Major's BWC footage, PO Napolitano stated that he did not recognize the voice of the officer who made these remarks and said he did not recall whether he made this remark. When asked if he observed any other officers strike § 87(2)(b) while attempting to restrain him, PO Napolitano stated that he did not know (**Board Review 58**).

An officer's use of an impolite word during a stressful street encounter where that officer is attempting to gain control of the situation does not constitute misconduct (DAO-DCT Case #201818951) (**Board Review 52**).

Patrol Guide procedure, 221-01, states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force (**Board Review 50**).

Although BWC footage does not capture PO Napolitano in frame when this remark was made, § 87(2)(b) identified him as the officer who said it. Furthermore, PO Napolitano acknowledged punching § 87(2)(b) while arresting him and cell phone footage taken at Brower Park shows that he was the only officer who did so. At the time this remark was made, § 87(2)(b) was already in the holding cell area and was not resisting officers or behaving in a threatening manner.

§ 87(2)(g)

Additionally, PO Napolitano's use of profanity was also inappropriate under the circumstances as this was not a stressful situation which needed to be kept under control.

§ 87(2)(g)

**Allegation P: Abuse of Authority: At the 77<sup>th</sup> Precinct Stationhouse, Sergeant Derek Jaffe did not obtain medical treatment for § 87(2)(b).**

**Allegation Q: Abuse of Authority: At the 77<sup>th</sup> Precinct Stationhouse, Police Officer Stephanie Perez did not obtain medical treatment for § 87(2)(b).**

**Allegation R: Abuse of Authority: At the 77<sup>th</sup> Precinct Stationhouse, Officers did not obtain medical attention for § 87(2)(b).**

§ 87(2)(b) stated that he received swelling around his left eye because of PO Napolitano punching him. Immediately upon entering the stationhouse, § 87(2)(b) requested medical attention from the desk sergeant, identified by the investigation as Sgt. Jaffe. Sgt. Jaffe told § 87(2)(b) that he would get medical attention for him. While § 87(2)(b) was waiting in a holding cell, he requested medical attention from PO Perez, who stated that they would "handle" § 87(2)(b). § 87(2)(b) spend approximately five to six hours at the stationhouse and during this time, he requested medical attention from several other officers, whom he could not describe. § 87(2)(b) did not receive medical treatment at the stationhouse before he was released (**Board Review 1, 43**).

PO Perez stated § 87(2)(b) requested medical attention from PO Melendez prior to being lodged in a holding cell. § 87(2)(b) did not request medical attention from any officer prior to this point. PO Melendez radioed EMS, who arrived approximately five minutes after his call. When EMS arrived at the stationhouse, § 87(2)(b) refused to be treated. PO Perez clarified that she did not observe this conversation and was informed of it by PO Melendez, who did not say why § 87(2)(b) had refused medical treatment. PO Melendez completed a Medical Treatment of Prisoner Report. PO Melendez also received treatment from EMS while at the stationhouse for pain to his face because of being kicked by § 87(2)(b). PO Perez did not observe § 87(2)(b) make any complaints that medical treatment had been delayed. PO Perez did not believe that an EMS response to the stationhouse would be recorded in the command log. PO Perez did not recall any interactions between her and § 87(2)(b) while at the stationhouse and denied that § 87(2)(b) requested medical attention from her at any point and she did not recall whether § 87(2)(b) informed her that he had sustained any injuries (**Board Review 45**).

PO Melendez stated that he interacted with § 87(2)(b) at the stationhouse when he processed his arrest, though he did not recall if § 87(2)(b) requested medical treatment at any point. He was not aware of § 87(2)(b) requesting medical treatment from any other officer. He did not recall making any observation that § 87(2)(b) was injured and did not recall whether § 87(2)(b) refused medical attention at any point. PO Melendez reviewed the MTPR he prepared for § 87(2)(b) and it did not refresh his recollection as to whether § 87(2)(b) had any injuries, requested medical attention at any point during the incident, or whether he refused medical

attention. PO Melendez stated that he himself received medical at the stationhouse as a result of § 87(2)(b) kicking him in the face (**Board Review 44**).

PO Feraca, PO Brissettortiz and PO Napolitano had no recollection of § 87(2)(b) requesting medical attention at any point during the incident.

BWC from PO Major shows, at 02:44, visible on the media player at the bottom of the screen, § 87(2)(b) is escorted into the stationhouse and is seated near the front desk. At 04:40, § 87(2)(b) is standing next to PO Major and states, "Who can I speak to? As a matter of fact, I need to see medical." PO Major is making a phone call as § 87(2)(b) makes this statement and does not acknowledge this request. At 07:43, § 87(2)(b) is brought to the front desk and speaks with Sgt. Jaffe before being escorted to a holding cell. At no point during this footage does § 87(2)(b) request medical attention from Sgt. Jaffe or any other officer (**Board Review 31**). § 87(2)(b) alleged that immediately upon entering the stationhouse, he told Sgt. Jaffe that he needed medical attention. BWC footage captures the time in which § 87(2)(b) enters the stationhouse until he is lodged in a holding cell. § 87(2)(b) does not request medical attention from Sgt. Jaffe during the time in which he alleged this occurred. It is therefore recommended that **allegation P** be closed as § 87(2)(g).

BWC captures § 87(2)(b) request medical attention from PO Major, who was on a phone call at the time, and does not appear to hear § 87(2)(b) request. Although PO Perez denied that § 87(2)(b) requested medical treatment from her at any point, her statement was consistent with the MTPR prepared by PO Melendez, which states that § 87(2)(b) requested medical attention, but refused it at the stationhouse. PO Melendez could not recall any details related to the MTPR he prepared for § 87(2)(b) and did not have an independent recollection of § 87(2)(b) requesting or refusing medical treatment at any point during the incident.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

**Allegation S: Discourtesy – At the 77<sup>th</sup> Precinct stationhouse, Police Officer Michael Napolitano spoke discourteously to § 87(2)(b)**

**Allegation T: Discourtesy – At the 77<sup>th</sup> Precinct stationhouse, Police Officer Michael Napolitano spoke discourteously to § 87(2)(b)**

**Allegations U: Discourtesy – At the 77<sup>th</sup> Precinct stationhouse, Police Officer Michael Napolitano threatened § 87(2)(b) with the use of force.**

77th Precinct stationhouse security footage shows, between 45:21 and 47:54, § 87(2)(b) and § 87(2)(b) are standing in the lobby when PO Napolitano appears behind the security gate and begins speaking with them. Although the footage does not have audio, the conversation appears to become contentious as § 87(2)(b) and PO Napolitano begin pointing at one another. § 87(2)(b) appears to tell § 87(2)(b) to go outside, which he does. § 87(2)(b) then returns to the lobby and PO Napolitano appears again before both § 87(2)(b) and § 87(2)(b) go outside (**Board Review 41**).

§ 87(2)(b) stated that she and § 87(2)(b) arrived at the 77<sup>th</sup> Precinct and while in the lobby area, spoke to PO Napolitano, who told them that he had arrested § 87(2)(b) for "being a dickhead." § 87(2)(b) asked PO Napolitano why the police were always harassing § 87(2)(b) and why they did not arrest any white kids in the neighborhood. PO Napolitano responded, "Because there are no fucking white kids around here." Then PO Napolitano then told § 87(2)(b) "I'm going to



fuck you up, like I fucked your son up” before ordering both § 87(2)(b) and § 87(2)(b) to “get the fuck out” of the stationhouse (**Board Review 2**).

§ 87(2)(b) statement was generally consistent with § 87(2)(b) though he did not allege that PO Napolitano called § 87(2)(b) a “dickhead” and did not allege that PO Napolitano stated, “there are no fucking white kids around here” (**Board Review 3**)

PO Napolitano stated that he had no recollection of any interaction with § 87(2)(b) parents while at the stationhouse. After reviewing the stationhouse footage, PO Napolitano said it did not refresh his recollection of any interaction he had with § 87(2)(b) and § 87(2)(b) (**Board Review 47**) .

No other officer had any recollection of this interaction.

An officer’s use of an impolite word during a stressful street encounter where that officer is attempting to gain control of the situation does not constitute misconduct (DAO-DCT Case #201818951)(**Board Review 52**).

Patrol Guide procedure, 221-01, states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force (**Board Review 50**).

The profanities allegedly used by PO Napolitano during this encounter would not have been used to gain control of a stressful encounter. Though the stationhouse footage does not include audio of the conversation between PO Napolitano and § 87(2)(b) parents, § 87(2)(b) and § 87(2)(b) statements were consistent regarding PO Napolitano’s threat of force against § 87(2)(b) as well as his profane remark to “get the fuck out” of the stationhouse. Earlier that same day, PO Napolitano engaged in a separate, unprovoked, outburst at the stationhouse in which he told § 87(2)(b) that if he saw him again, he was going to “fucking crack [him] again.”

CCRB case #201903527 involved a substantiated discourtesy (word) allegation against PO Napolitano in which he said to a civilian, “I’ll collar you bro, I don’t give a fuck. You know me, I don’t give a shit.” In his interview for that case, PO Napolitano acknowledged using discourteous language towards the complainant, stated that there was no reason why he used profanity, and joked that he did so because he was Italian (**Board Review 67**).

PO Napolitano has demonstrated a pattern of using discourteous remarks towards civilians, which only serve to escalate the interactions in which they are used. § 87(2)(g)

§ 87(2)(g)

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**Allegation V – Untruthful Statement: On December 3, 2021, and December 28, 2021, at 100 Church Street in Manhattan, Police Officer Michael Napolitano provided a misleading official statement to the CCRB.**

**Allegation W – Untruthful Statement: On December 3, 2021, at 100 Church Street in Manhattan, Police Officer Michael Napolitano provided a false official statement to the CCRB.**

During his interviews on December 3, 2021, and December 8, 2021, PO Napolitano failed to recall many of the details leading up to the force he used against § 87(2)(b) as well as later interactions he had with § 87(2)(b) and his parents at the 77<sup>th</sup> Precinct Stationhouse. During his initial interview, PO Napolitano was asked how many people were in the park during § 87(2)(b) arrest, to which he said that he did not recall. He was then asked if he would characterize the number of people as “many or not many,” to which PO Napolitano stated that he did not recall. Later in the interview, PO Napolitano was asked whether he had any interaction with § 87(2)(b) prior to being instructed to handcuff him. PO Napolitano stated, “There were so many people, I don’t remember whether it was specific to him.” When asked for clarification as he had previously testified that he did not recall how many people were in the park, PO Napolitano stated that he had not been asked for an approximate number.

PO Napolitano stated that as he was leaving the park, an officer, whom he did not recall, instructed him to handcuff § 87(2)(b) for reasons that were unknown to PO Napolitano. PO Napolitano stated that he did not recall observing § 87(2)(b) committing any offense prior to his arrest. PO Napolitano was referred to his memo book entry for this incident, which noted an arrest of a “disorderly male inside Brower Park.” When asked for clarification on § 87(2)(b) behavior, PO Napolitano stated that he did not know why he wrote this.

PO Napolitano stated that he did not recall interacting with § 87(2)(b) § 87(2)(b) or § 87(2)(b) at the 77<sup>th</sup> Precinct stationhouse nor did he recall any of the details of the allegations pled against him at this location. PO Napolitano was shown stationhouse footage of him interacting with § 87(2)(b) and § 87(2)(b) in which he and § 87(2)(b) appear to engage in a verbal dispute, though he stated that he had no independent recollection of this encounter.

During his initial interview PO Napolitano acknowledged using force against § 87(2)(b) including a hand strike to § 87(2)(b) left eye. Cell phone footage of this incident confirms that he was the only officer who used force against § 87(2)(b). During a second interview on December 8, 2021, PO Napolitano was shown BWC footage which captures § 87(2)(b) standing outside of a holding cell and speaking to Police Officer Matthew Fagan about his arrest. § 87(2)(b) says that from a distance, he was “talking shit” to an officer, who was already walking away. § 87(2)(b) then asks why that officer turned around to choke him and punch him in the face. PO Fagan asks § 87(2)(b) “Was it any of these guys?” § 87(2)(b) then points to an officer standing out of frame, who states, “It was me. I did it. If I see you again, I’m going to crack you in the fucking face again.” PO Napolitano stated that he did not recognize the voice in the footage, did not recall whether he made this remark, and did not have an independent recollection of the interaction captured in the footage.

PO Napolitano did have a specific recollection regarding the force he used against § 87(2)(b) which included two materially false statements. PO Napolitano initially stated that he approached § 87(2)(b) and ordered him to put his hands behind his back, to which § 87(2)(b)

responded by raising his fists in front of his chest in a “boxer stance,” and said, “Fuck you. I’m not going anywhere.” PO Napolitano stated that these actions caused him to fear for his safety, which he cited as the reason why he took § 87(2)(b) to the ground. PO Napolitano was presented with video, which captures § 87(2)(b) from behind and shows him extending and raising his arms to his sides with his palms open before lowering his hands and bringing them in front of his torso, at which point PO Napolitano approaches § 87(2)(b) and grabs his arm. When asked if he could identify the point in time in which § 87(2)(b) raised his fists, PO Napolitano stated this occurred “right before I got to him” and “just before I grabbed his left arm.” PO Napolitano was then presented with footage from his own BWC, which covers the same period and captures a front angle of § 87(2)(b) after he lowers his hands and shows that he is holding them together in front of his waistband. PO Napolitano stated that § 87(2)(b) had his fists raised prior to lowering them into the frame.

PO Napolitano denied making any contact with § 87(2)(b) neck during his arrest. When shown cell phone video capturing him using a chokehold to take § 87(2)(b) to the ground, PO Napolitano again denied contacting § 87(2)(b) neck, and stated that he made contact with § 87(2)(b) chest. When asked if he ever pushed the back of § 87(2)(b) head into the ground using his hands, PO Napolitano stated he guided § 87(2)(b) head because there was spit coming out of his mouth and he was fearful of contracting Covid-19. PO Napolitano denied applying pressure to the back of § 87(2)(b) head. He did not recall how he guided § 87(2)(b) head. PO Napolitano was presented with cell phone footage of him placing his hands on the back of § 87(2)(b) head, then using his bodyweight to push § 87(2)(b) face into the ground, causing § 87(2)(b) to scream. PO Napolitano stated the footage depicted him guiding § 87(2)(b) head away from him because there was spit coming out of his mouth. The footage did not change PO Napolitano’s recollection as to whether he applied any pressure to the back of § 87(2)(b) head.

Patrol Guide Procedure 203-08, a misleading statement is a statement that is intended to misdirect the fact finder, and materially alter the narrative by: intentionally omitting a material fact or facts, or altering and/or changing a member’s prior statement or account when a member of service is confronted with independent evidence indicating that an event did not occur as initially described. A material fact is a significant fact that a reasonable person would recognize as relevant to, or affecting, the subject matter of the issue at hand, including any foreseeable consequences, or establishment of the elements of some proscribed conduct. It is a fact that is essential to the determination of the issue and the suppression, omission, or alteration of such fact would reasonably result in a different decision or outcome. A material fact may be distinguished from an insignificant, trivial, or unimportant detail. A false official statement is defined as “an intentional statement that a member of service knows to be untrue, which is material to the outcome of an investigation, proceeding, or other matter in connection with which the statement is made” (**Board Review 60**).

§ 87(2)(g)  
§ 87(2)(b) PO Napolitano’s conflicting testimony, that he had no recollection of how many people were in the park, and later, that there were too many people in the park for him to specifically recall any interaction with § 87(2)(b) prior to his arrest. § 87(2)(g) These conflicting statements demonstrated PO Napolitano’s hostility towards the CCRB’s questions and revealed that he remembered more information than he was willing to provide, instead choosing to answer that he did not recall material information. Specifically, that he did not recall why he arrested § 87(2)(b) other than he was instructed to do so by an unknown officer for unknown reasons. Additionally, whether PO Napolitano had any interactions with § 87(2)(b) § 87(2)(b) and § 87(2)(b) is material information, though PO Napolitano stated that he had no



recollection of these encounters despite reviewing video footage. PO Napolitano's specific recollection regarding the force used against § 87(2)(b) as well as § 87(2)(b) specific actions immediately prior to this point, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Napolitano cited § 87(2)(b) raising his fists and taking a "boxing stance" as cause to fear for his safety and the reason he took § 87(2)(b) to the ground. PO Napolitano stated that the cell phone footage and his BWC footage captured the moment which § 87(2)(b) raised his fists. However, these videos show that § 87(2)(b) did not in fact raise his fists, take any sort of fighting stance, or make any threatening gesture prior to PO Napolitano taking him to the ground. After viewing video of himself utilizing a chokehold to take § 87(2)(b) to the ground, PO Napolitano did not amend his previous statement that he did not make any contact with § 87(2)(b) neck during his arrest despite the footage capturing him doing so.

After viewing footage of himself putting his hands on the back of § 87(2)(b) head and applying a significant amount of his bodyweight to push § 87(2)(b) face into the ground, PO Napolitano maintained his denial that he applied any pressure to the back of § 87(2)(b) head. PO Napolitano's statement that he did not apply any pressure to the back of § 87(2)(b) head is not consistent with the footage which captures him doing so.

§ 87(2)(g)

#### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 04**).
- § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 06**).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 07**).
- PO Melendez has been a member of service for eight years and has been named as a subject in three additional complaints and eight additional allegations, none of which have been substantiated. § 87(2)(g)
- PO Napolitano has been a member of service for six years and has been named as a subject in seven additional CCRB complaints and eleven additional allegations:
  - #201903527 involved substantiated allegations of an entry of a premises, seizure of property, and discourtesy (word). For each allegation, the Board recommended command discipline A, which the NYPD imposed.
  - #202002635 involved an allegation of a chokehold which the investigation

recommended be closed as substantiated. This case is pending board review. Specifically, it was alleged that PO Napolitano utilized a chokehold to forcibly take the complainant to the ground.

- PO Brissettortiz has been a member of service for five years and this is the first CCRB complaint to which he has been a party.
- PO Feraca has been a member of service for three years and has been named as a subject in two additional CCRB complaints and four additional allegations, none of which have been substantiated.
- PO Perez has been a member of service for four years and has been named as a subject in five additional CCRB complaints and eight allegations, none of which have been substantiated.

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- A December 29, 2021 inquiry to the Office of the Comptroller revealed that a notice of claim has not been filed for in regard to this incident (**Board Review 65**).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
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Squad: 8

Investigator: Trevor Hackett Inv. Trevor Hackett 03/17/2022  
Signature Print Title & Name Date

Squad Leader: Ethan De Angelo IM Ethan De Angelo 3/17/2022  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date

